

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DARLINGTON AMADASU,	:	APPEAL NO. C-090351
	:	TRIAL NO. A-0701398
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
EMMETT O'NEAL, M.D.,	:	
	:	
and	:	
THE DEACONESS HOSPITAL,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant, Darlington Amadasu, appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of defendants-appellees, Emmett O'Neal, M.D., and The Deaconess Hospital, in a suit alleging the improper performance of a medical procedure.

In 2007, Amadasu filed a complaint setting forth a number of causes of action, including medical malpractice and battery. Each of the claims involved surgery that O'Neal had performed at Deaconess.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Deaconess filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C), contending that the complaint had been filed beyond the applicable limitations period and that Amadasu had failed to file an affidavit of merit under Civ.R. 10(D). The trial court granted the motion, and Amadasu appealed.

This court reversed the trial court's judgment, holding that, because Amadasu had given 180 days' notice of his claims prior to the expiration of the limitations period, his complaint was timely under R.C. 2305.113(B)(1).²

We also held that the trial court had erred by dismissing the claims based on Amadasu's failure to file an affidavit of merit.³ We stated that dismissal was not the proper remedy under Civ.R. 10(D) and that O'Neal and Deaconess should have instead filed a motion for a more definite statement.⁴ Nonetheless, we emphasized that "the gist of Amadasu's complaint was medical malpractice, which requires expert testimony to prove liability."⁵

On remand, Amadasu relied on his own affidavits to support his claims, and he failed to identify any expert witness within the time prescribed by the trial court's scheduling order. O'Neal and Deaconess filed motions for summary judgment accompanied by affidavits of expert witnesses. The trial court entered summary judgment in favor of O'Neal and Deaconess on the basis that Amadasu had failed to come forward with expert evidence to rebut the assertions of O'Neal and Deaconess.

In five related assignments of error, Amadasu now contends that the trial court erred in entering summary judgment in favor of O'Neal and Deaconess and in denying his motion for summary judgment. We address the assignments of error together.

² See *Amadasu v. O'Neal*, 176 Ohio App.3d 217, 2008-Ohio-1730, 891 N.E.2d 802, ¶15.

³ Id. at ¶22.

⁴ Id.

⁵ Id. at ¶21.

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party.⁶ Civ.R. 56(C) mandates the granting of summary judgment against a party who, after adequate time for discovery, fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party would bear the burden of proof at trial.⁷ This court reviews the granting of summary judgment de novo.⁸

In the case at bar, summary judgment was proper. O'Neal and Deaconess provided competent evidence to support their assertion that they had not violated the applicable standards of care. Amadasu's only response was to rest on his own sworn statements.

Nonetheless, Amadasu again argues that his statements were sufficient to rebut the affidavits submitted on behalf of O'Neal and Deaconess. Amadasu does not contend that he was qualified to present expert testimony; rather, he argues that expert testimony was unnecessary. Amadasu maintains that his claims sounded in battery rather than in medical malpractice and that he was competent to testify about his lack of consent to the medical procedures.

This argument is not well taken. Under the law-of-the case doctrine, "the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and

⁶ See *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

⁷ See *Torrance v. Cincinnati Metro. Hous. Auth.*, 1st Dist. No. C-081292, 2010-Ohio-1330, ¶17.

⁸ *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶16.

reviewing levels.”⁹ This court has previously held that Amadasu’s complaint sounded in medical malpractice and that Amadasu was therefore required to come forward with expert evidence. Thus, we reject Amadasu’s claim that lay evidence was sufficient.

Amadasu was given ample opportunity to secure expert witnesses to contest the summary-judgment motions, and he failed to do so. Because Amadasu’s failure to offer expert evidence was fatal to his claims, the trial court correctly entered summary judgment in favor of O’Neal and Deaconess. We overrule Amadasu’s assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010
per order of the Court _____.
Presiding Judge

⁹ *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3, 462 N.E.2d 410.